Legislative Summary LS-456E

BILL C-38: AN ACT TO AMEND THE CONTRAVENTIONS ACT AND THE CONTROLLED DRUGS AND SUBSTANCES ACT

Gérald Lafrenière
Law and Government Division

11 June 2003
Revised 12 February 2004

Library of Parliament
Bibliothèque du Parlement

Parliamentary Research Branch

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

LEGISLATIVE HISTORY OF BILL C-38

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
First Reading:	27 May 2003	First Reading:	
Referred to Committee:	21 October 2003	Second Reading:	
Pre-Study Report:	6 November 2003	Committee Report:	
Report Stage and Second Reading:		Report Stage:	
Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

CE DOCUMENT EST AUSSI PUBLIÉ EN FRANÇAIS

TABLE OF CONTENTS

Page

BACKGROUND 1

A. Definitions 2
1. Cannabis 3
2. Decriminalization 3
3. Depenalization 4
4. Legalization 4
5. Prohibition 4
6. Regulation 4

B. Facts and Figures 5
1. Consumption 5
2. Offences 5
a. Possession 5
b. Production 5
c. Sentencing 6
d. Seizures 6
3. Amount 6
4. Potency 7
5. Production 7
6. Exportation 7
7. Key Dates 7

C. Parliamentary Reports 8

D. Case Law 9

E. International Conventions 10

F. Medical Use of Cannabis 14

DESCRIPTION AND ANALYSIS 16

A. *Controlled Drugs and Substances Act* 16
1. Clause 5 – Punishments for the Offence of Possession 17
a. Section 4(4) – General Maximum Punishment for Cannabis Possession (no change from current law) 17
b. Section 4(5) – Maximum Punishment for Possession of a Small Amount of Hashish 17

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

104-04345/

Page

c. Section 4(5.1) – Maximum Punishment for Possession of a Small Amount of Marihuana 17
d. Section 4(5.2) – Maximum Punishment for Possession of a Small Amount of Hashish or a Small Amount of Marihuana in Specified Circumstances 17
e. Section 4(5.4) – Maximum Punishment for Possession of an Intermediate Amount of Marihuana 18

2. Clause 6 – Punishments for the Offence of Production 20
a. Section 7(3)(a) – Maximum Punishment for Production of Cannabis – Not More Than 3 Marihuana Plants 20
b. Section 7(3)(b) – Maximum Punishment for Production of Cannabis – 4-25 Marihuana Plants 21
c. Section 7(3)(c) – Maximum Punishment for Production of Cannabis – 26-50 Marihuana Plants 21
d. Section 7(3)(d) – Maximum Punishment for Production of Cannabis – More Than 50 Marihuana Plants 21

3. Clauses 7-10 – Other Amendments 22

4. Other Offences 23

B. *Contraventions Act* 24
1. Clause 1 – Purposes of the *Contraventions Act* 26
2. Clause 2 – Relationship With Other Legislation, and Method of Prosecution 27
3. Clause 3 – Maximum Fines for Contraventions by Young Persons 29
4. Clause 4 – Application of Provincial Legislation 29
5. Criminal Records and the Canadian Police Information Centre 30

C. Review 32

D. Coming Into Force 32

E. Canada's Drug Strategy 32

COMMENTARY 35

CANADA

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

BILL C-38: AN ACT TO AMEND THE CONTRAVENTIONS ACT AND THE CONTROLLED DRUGS AND SUBSTANCES ACT*

BACKGROUND

Bill C-38, An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act, was introduced by the Minister of Justice and received first reading in the House of Commons on 27 May 2003. **The bill was then referred to the Special Committee on the Non-Medical Use of Drugs (Bill C-38) for consideration. The Committee reported the bill back with some amendments.** This bill has been referred to as the "marihuana legislation," the "pot bill," the "drug bill," and the "decriminalization bill," among other things. As these names suggest, the legislation deals with reform of cannabis laws in Canada. The key elements in Bill C-38 are:

- "decriminalization" of the possession of small and intermediate amounts of cannabis, through designating such possession as a contravention under the *Contraventions Act*; and
- a reform of punishment in relation to the offence of producing marihuana.

An update to the legislative provisions dealing with cannabis should come as no surprise. For several months preceding the tabling of Bill C-38, there was speculation that the government would introduce a bill on this subject. Indeed, the implementation of a drug strategy and the possible reform of cannabis possession laws were commitments made in the September 2002 Speech from the Throne:

> The government will also implement a national drug strategy to address addiction while promoting public safety. It will expand the number of drug treatment courts. It will act on the results of parliamentary consultations with Canadians on options for change in

---

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It should be noted, however, that Bill C-38 died on the *Order Paper* when Parliament was prorogued on 12 November 2003. **(Note: Bill C-38 was later introduced by the government as Bill C-10 on 12 February 2004, during the 3rd session of the 37th Parliament.)**

> our drug laws, including the possibility of the decriminalization of marihuana possession.[1]

As indicated in that speech, among impetuses for this legislation were the reports tabled last year following public consultations by two special parliamentary committees, one from the House of Commons and the other from the Senate. These documents are discussed below (see "Parliamentary Reports").

One of the key messages that the government is taking pains to communicate is that this legislation is not a first step to legalization. In addition, the government emphasizes that these reforms are in no way intended to encourage or normalize the use of cannabis. It believes that the proposed reforms (through increased enforcement) and the accompanying drug strategy (through increased prevention and treatment) will help to reduce the use of cannabis and other drugs. The government's rationale is based on its opinion that cannabis is a harmful product and must therefore remain prohibited.

Proposals to reform drug laws often leave the impression that the government's only focus and responsibility is in relation to enforcement. The legislation generally overshadows the fact that enforcement is only one part of the government's plan to control and regulate the use of drugs. Other aspects of the plan, such as prevention and treatment, are often not set out in legislation. For this reason, the present summary of Bill C-38 also considers other aspects of the government's plan, and includes (in its description and analysis section) a brief discussion of the new $245-million drug strategy that was announced on the day Bill C-38 was tabled.

A. Definitions

Reform of cannabis legislation involves discussion of such terms as "decriminalization," "depenalization" and "legalization." These terms are often misunderstood and can lead to confusion about what is being proposed. The following pages set out the meanings of certain key terms as defined by the Senate Special Committee on Illegal Drugs,[2] and comment on their applicability to Bill C-38 where appropriate. It is important to note that some of these terms are complementary, and that more than one may be applicable to a proposal.

---

(1) House of Commons, *Debates*, 30 September 2002.

(2) *Cannabis: Our Position for a Canadian Public Policy*, Report of the Senate Special Committee on Illegal Drugs, September 2002.

For example, a government establishing a legalized system may choose to implement regulatory aspects. In addition, a system that proposes to depenalize certain activities may continue to rely on prohibition.

1. Cannabis

> Three varieties of the cannabis plant exist: *cannabis sativa*, *cannabis indica*, and *cannabis ruredalis*. *Cannabis sativa* is the most commonly found, growing in almost any soil condition. The cannabis plant has been known in China for about 6000 years. The flowering tops and leaves are used to produce the smoked cannabis. Common terms used to refer to cannabis are pot, marihuana, dope, ganja, hemp. Hashish is produced from the extracted resin. Classified as a psychotropic drug, cannabis is a modulator of the central nervous system. It contains over 460 known chemicals, of which 60 are cannabinoids. Delta-9-tétrahydrocannabinol, referred to as THC, is the principal active ingredient of cannabis. Other components such [as] delta-8-tétrahydrocannabinol, cannabinol and cannabidiol are present in smaller quantities and have no significant impacts on behaviour or perception. However, they may modulate the overall effects of the substance.

2. Decriminalization

> Removal of a behaviour or activity from the scope of the criminal justice system. A distinction is usually made between *de jure decriminalization*, which entails an amendment to criminal legislation, and *de facto decriminalization*, which involves an administrative decision not to prosecute acts that nonetheless remain against the law. Decriminalization concerns only criminal legislation, and does not mean that the legal system has no further jurisdiction of any kind in this regard: other, non-criminal, laws may regulate the behaviour or activity that has been decriminalized (civil or regulatory offences, etc.).

Comment: This is a term that the government has not used because some people associate its meaning with legalization – a confusion that the government wants very much to avoid. Based on the above definition – removal of a behaviour or activity from the scope of the criminal justice system – it could be argued that this is precisely what Bill C-38 is attempting to accomplish in relation to the possession of small amounts of cannabis, because the criminal justice system (criminal courts) would no longer have jurisdiction over these offences once they are designated as contraventions. However, if one interprets decriminalization as meaning that

the act is no longer prohibited or illegal, this term would not apply to the proposed legislation, as the behaviour in question is not removed from the scope of the criminal law.

3. Depenalization

> Modification of the sentences provided in criminal legislation for a particular behaviour. In the case of cannabis, it generally refers to the removal of custodial sentences.

Comment: This is probably the term that best describes what Bill C-38 proposes in relation to the offence of possession of small amounts of cannabis. The government appears to prefer the use of the phrases "sentencing reform" or "alternative penalties."

4. Legalization

> Regulatory system allowing the culture, production, marketing, sale and use of substances. Although none currently exist in relation to "street-drugs" (as opposed to alcohol or tobacco which are regulated products), a legalization system could take two forms: without any state control (free markets) and with state controls (regulatory regime).

5. Prohibition

> Historically, the term designates the period of national interdiction of alcohol sales in the United States between 1919 and 1933. By analogy, the term is now used to describe UN and State policies aiming for a drug-free society. Prohibition is based on the interdiction to cultivate, produce, fabricate, sell, possess, use, etc., some substances except for medical and scientific purposes.

Comment: Under Bill C-38, cannabis would continue to be prohibited.

6. Regulation

> Control system specifying the conditions under which the cultivation, production, marketing, prescription, sales, possession or use of a substance are allowed. Regulatory approaches may rest on interdiction (as for illegal drugs) or controlled access (as for medical drugs or alcohol).

B. Facts and Figures

Some of the following statistics contradict others from different sources. These inconsistencies underline the difficulty in obtaining hard data on this topic.

1. Consumption

- 100,000 Canadians use marihuana on a daily basis. (Source: Minister of Justice)
- 325,000 Canadians use marihuana on a daily basis. (Source: report of the Senate Special Committee on Illegal Drugs)

2. Offences

a. Possession

- The number of reported drug incidents in Canada reached 91,920 in 2001; cannabis-related offences accounted for 71,624 of those incidents (almost 77%).
- Of those 71,624 offences, 70% were for possession, 16% for trafficking, 13% for cultivation, and 1% for importation.
- Thus, possession of cannabis accounted for approximately 54% of all reported drug incidents.(3)
- Of the approximately 50,000 drug-related charges laid in 1999, 70% involved cannabis, and in 43% (21,381) the charge was for possession of cannabis. (Sources: Statistics Canada and the report of the Senate Special Committee on Illegal Drugs)

b. Production

- Production offences have increased significantly over the past decade: from a rate of 7 incidents per 100,000 people in 1990 to 29 per 100,000 in 2001. (Source: Statistics Canada)
- The number of growing operations in British Columbia is increasing by an average of 36% per year, and the average size is increasing at a rate of 40% per year. The average dollar value of the growing operations discovered in British Columbia is between $100,000 and $130,000.(4)

---

(3) These numbers include only the most serious offence committed in each criminal incident, which consequently underestimates the total number of drug-related incidents, particularly offences with less severe penalties. In addition, it is important not to confuse the number of reported incidents with the number of charges that are laid by the police.

(4) Darryl Plecas, Yvon Dandurand, Vivienne Chin and Tim Segger, *Marihuana Growing Operations in British Columbia – An Empirical Survey (1997-2000)*, Department of Criminology and Criminal Justice – University College of the Fraser Valley and International Centre for Criminal Law Reform and Criminal Justice Policy, March 2002.

c. Sentencing[5]

- For the 1996-1997 fiscal year, 64% of persons convicted of drug trafficking were sentenced to imprisonment. The median sentence was four months. Probation was imposed as the most serious sentence in 24% of cases, and fines in 9%.

- With respect to possession, a fine was imposed in 63% of the cases, with a median amount of $200. A fine was imposed as the most serious sentence in 55% of cases, probation in 22% and imprisonment in 13%. (Sources: Statistics Canada and the report of the Senate Special Committee on Illegal Drugs)

- A recent study of growing operations in British Columbia sets out the following statistics on penalties awarded as part of a sentence for any of the charges involved in marihuana cultivation cases: prison sentences (18%), conditional sentences (29%), probation (26%), fine (42%), community service (7%), restitution (7%), firearms prohibition order (27%) and conditional or absolute discharge (4%). Conditional sentences were accompanied by other penalties in 73% of the cases. In addition, the study sets out the average penalty: prison sentence (4.5 months), conditional sentence (7.4 months), probation (12.8 months), fine ($1,845), community service (73 hours) and restitution ($1,670).[6]

d. Seizures

- In 2001, major Canadian law enforcement agencies seized close to 1.4 million marihuana plants.[7]

3. Amount

- A typical joint contains between 0.5 and 1 gram of cannabis.

- Fifteen grams would be the equivalent of approximately 15 to 30 joints. (Source: report of the Senate Special Committee on Illegal Drugs)

---

(5) It is very difficult to obtain reliable statistics regarding sentencing. First, there are no national statistics on illicit drug convictions and sentencing. For example, British Columbia, Manitoba, New Brunswick, and Nunavut do not provide adult criminal court data to Statistics Canada. A second weakness is that the statistics on drug convictions and sentencing, which are reported according to the categories under the *Controlled Drugs and Substances Act*, are limited in detail. While the national statistics on police charges break down the number of drug charges by both type of substance (for example, heroin, cocaine, and cannabis) and act (for example, possession, trafficking, importation, and cultivation), the statistics on convictions are broken down into only two categories: possession and trafficking.

(6) Plecas *et al.*(2002).

(7) *Marihuana Cultivation in Canada: Evolution and Current Trends*, Criminal Intelligence Directorate, Royal Canadian Mounted Police, November 2002.

4. Potency

- The THC content of 3,160 marihuana samples analyzed between 1996 and 1999 varied considerably. Although the highest value recorded was 25%, the yearly averages are much lower: 6% for 1996-1997, 5.5% for 1997-1998, and 5.7% for 1998-1999. Almost one-third of the samples were under 3%.

- Of all 3,160 samples analyzed, only 133 had a THC over 15% and only 8 were over 20%. (Source: *Marihuana Cultivation in Canada: Evolution and Current Trends*, Criminal Intelligence Directorate, Royal Canadian Mounted Police, November 2002)

5. Production

- Current annual production is estimated at about 800 tonnes. (Source: *Marihuana Cultivation in Canada: Evolution and Current Trends*, Criminal Intelligence Directorate, Royal Canadian Mounted Police, November 2002)

6. Exportation

- 95% of Canadian marihuana production is exported to the United States. (Source: John Walters, Director, White House Office of National Drug Control Policy)

- It is impossible to determine exactly what percentage of marihuana grown in Canada is intended for U.S. markets. Although large quantities of Canadian marihuana are smuggled into the United States, Canada is far from being the principal source. (Source: *Marihuana Cultivation in Canada: Evolution and Current Trends*, Criminal Intelligence Directorate, Royal Canadian Mounted Police, November 2002)

- Much of the marihuana produced in Canada supplies demand in this country. Nonetheless, a sizable yet undetermined amount – much of which is higher-potency marihuana – is smuggled into the United States. (Source: *National Drug Threat Assessment 2003*, National Drug Intelligence Center, U.S. Department of Justice, January 2003)

7. Key Dates

1923: Cannabis is added to the schedule of the *Opium and Narcotic Drug Act*; at that time, simple possession of any drug is a hybrid offence.

1938: Production of cannabis (a hybrid offence) is prohibited.

1961: Simple possession and production become a strictly indictable offence.

1969: Simple possession once again becomes a hybrid offence.

1972: In the Le Dain Commission's report on cannabis, the majority's recommendations include: that the prohibition against the simple possession of cannabis be repealed; that "trafficking" should not include the giving, without exchange of value, of a

quantity of cannabis that could reasonably be consumed on a single occasion; and that the prohibition against cultivating cannabis for personal use be repealed.

1974: Introduction of Bill S-19, which proposes that the possession of cannabis become a strictly summary conviction offence. The bill is not passed by Parliament.

1996: Simple possession of small amounts of cannabis becomes a strictly summary conviction offence.

C. Parliamentary Reports

Many key components of the renewed drug strategy and the proposed reform of the cannabis legislation can be found in two recent parliamentary reports on drug policy and legislation in Canada. In 2001 and 2002, the Senate Special Committee on Illegal Drugs and the House of Commons Special Committee on Non-Medical Use of Drugs held consultations across Canada and heard from many international witnesses. The House of Commons report was a study of drugs policy in general and did not focus specifically on cannabis. The Senate report focussed on the approach taken in Canada to cannabis, but many of its recommendations dealt with drug policy in general.

In relation to the regulation of cannabis, the Senate Special Committee on Illegal Drugs recommended a legalized system under which the production and sale of cannabis would be regulated through licensing. The option of decriminalization was rejected because it would have deprived the government of a necessary regulatory tool for dealing with the entire production, distribution, and consumption network. A regulatory system would permit the following: more effective targeting of illegal traffic; a reduction in the role played by organized crime; prevention programs better adapted to the real world and better able to prevent and detect at-risk behaviour; enhanced monitoring of products, quality and properties; better user information and education; and respect for individual and collective freedoms.

The House of Commons Special Committee on Non-Medical Use of Drugs, meanwhile, opted for decriminalization, which was described as the removal of *criminal* sanctions for certain activities while retaining legal prohibitions. In its rationale for reform, the Committee cited instances of inconsistent and unfair enforcement and stated that the consequences of a criminal conviction for simple possession of a cannabis product were disproportionate to the potential harm associated with personal use. The Committee rejected the option of legalization because it was concerned that this could be misconstrued as evidence that Parliament was not concerned about the widespread use of cannabis and its effects. Moreover,

the Committee was not convinced that legalization would remove the profit from the illegal production and sale of cannabis or significantly discourage criminals currently involved in distribution. The Committee thus recommended that possession and cultivation of small amounts of cannabis for personal use be decriminalized, except where the offence was committed in specified aggravating circumstances, such as the use of cannabis in association with impaired driving.

D. Case Law

There have been several case law developments dealing with the offence of possession of cannabis. Recent significant decisions are summarized below.

- *R.* v. *Parker* (2000):[8] Decision of the Ontario Court of Appeal dealing with the medical use of marihuana. The Court concluded that the broad prohibition of possession of marihuana was contrary to section 7 of the *Canadian Charter of Rights and Freedoms* and was not saved by section 1. It declared the prohibition of the possession of marihuana to be unconstitutional and of no force and effect. However, the Court suspended the declaration of invalidity for one year to give Parliament the opportunity to amend the law to include adequate exemptions for medical use. In response, Health Canada adopted the *Marihuana Medical Access Regulations* (MMAR).

- *R.* v. *Hitzig* (2003):[9] Decision of the Ontario Superior Court of Justice dealing with the MMAR. The Court found that the MMAR do not properly deal with legal access to marihuana and declared the regulations invalid. However, the Court suspended the order invalidating the MMAR for six months to allow the government time to act.

  The Ontario Court of Appeal upheld this decision and held that the lack of access to a legal supply of medical marihuana made the MMAR unconstitutional. However, rather than strike down the whole MMAR and declare that the prohibition of the possession of marihuana continues to be unconstitutional and of no force and effect, the Court struck down only specific provisions of the regulations. The Court indicated that the striking down of those provisions created a constitutionally valid medical exemption; this, in turn, made the prohibition of the possession of marihuana constitutionally valid, and removed any uncertainty surrounding the prohibition's validity.

- *R.* v. *J.P.* (2003):[10] Decision of the Ontario Superior Court of Justice dealing with the recreational use of marihuana. The Court referred to the *Parker* decision that declared section 4 (possession) of the *Controlled Drugs and Substances Act* invalid in relation to

(8) 49 O.R. (3d) 481 (Ont. C.A.).

(9) (2003) O.J. No. 12, 9 January 2003.

(10) (2003) O.J. No. 1, 2 January 2003.

cannabis. That declaration was suspended for one year from 31 July 2000. The Court found section 4 invalid as of 31 July 2001 for the following reasons: the response to *Parker* was to adopt the MMAR, in which there is no prohibition against marihuana possession; in addition, Parliament at no time re-enacted section 4 as it relates to marihuana; thus, neither the Act nor its regulations set out a prohibition and a punishment with respect to the possession of marihuana.

The Ontario Court of Appeal agreed that the offence of possession of marihuana was of no force and effect when the accused was charged because, at the time of the charge, there was no constitutionally valid medical exemption as required by the *Parker* decision.

- *R.* v. *Malmo-Levine*, *R.* v. *Caine* and *R.* v. *Clay*:[11] **The Supreme Court of Canada in a majority decision on 23 December 2003 decided that the prohibition of marihuana possession for personal use is not in violation of either section 7 (life, liberty and security of the person) or 12 (cruel and unusual punishment) of the *Canadian Charter of Rights and Freedoms*. In coming to this conclusion, the Court left the decision on decriminalization of marihuana to Parliament.**

The **Ontario Superior Court of Justice decision in** *R.* v. *J.P.* **had** created much confusion over whether the simple possession of marihuana is still an offence in Canada. **That** decision has been followed in several other provinces. **The decision by the Ontario Court of Appeal has clarified the law to some extent, particularly in the province of Ontario. In response to the Court of Appeal decision, the government has announced a stay of prosecution for several thousand marihuana possession offences. The stays apply to those charged with possession between 31 July 2001 and 7 October 2003.**

E. International Conventions

Canada is a party to three key international conventions dealing with narcotic drugs and psychotropic substances:

- the *Single Convention on Narcotic Drugs, 1961* (Single Convention) and the *Protocol Amending the Single Convention on Narcotic Drugs, 1961* (Single Convention Protocol);
- the *Convention on Psychotropic Substances*, 1971 (Psychotropics Convention); and
- the *Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, 1988 (Trafficking Convention).

---

(11) 2003 S.C.C. 74 and 2003 S.C.C. 75.

These conventions have been described as follows:

> The Single Convention is a consolidation of nine multilateral drug control treaties negotiated between 1912 and 1953. Apart from consolidation, the key purposes of the Convention were to reorganize the United Nations-based drug administration, and to extend the existing control system to include the raw materials for narcotics. Well over 100 narcotic drugs are controlled under the Convention; these include primarily plant-based products such as opium, opium derivatives (morphine, heroin, codeine), cannabis, coca and cocaine, but also synthetic narcotics including methadone and pethidine. The substances are categorized into four schedules, each schedule being subject to a different level of control. The Single Convention prohibits, for example, opium smoking and eating, coca leaf chewing, cannabis resin smoking, and the non-medical use of cannabis.
>
> The Single Convention Protocol further tightens controls on the production, use and distribution of illicit narcotics. The Protocol also contains provisions on treatment and rehabilitation for drug abuse and addiction.
>
> The Psychotropics Convention extends international control to include numerous synthetic psychotropic substances: stimulants, such as amphetamines; depressants, including barbiturates; and hallucinogens, such as mescaline and LSD (lysergic acid diethylamide). Similar to the Single Convention, the drugs are organized into four schedules depending on their addiction and abuse potential, and their therapeutic value. The Convention sets out detailed provisions concerning the international trade of psychotropics, including measures that strictly control their export and import. Measures for the prevention of abuse and for rehabilitation are also included.
>
> The Trafficking Convention is intended to complement the other two Conventions by attacking the illicit traffic of drugs under international control. Its key goals are improved international law enforcement cooperation and strengthened domestic criminal legislation. The Convention contains provisions on money laundering, the freezing of financial and commercial records, extradition of drug traffickers, transfer of criminal proceedings, mutual legal assistance, and strict monitoring of chemicals often used in illicit production.[12]

---

(12) Jay Sinha, *The History and Development of the Leading International Drug Control Conventions*, paper prepared for the Senate Special Committee on Illegal Drugs by the Parliamentary Research Branch, Library of Parliament, 21 February 2001; available on the Committee's Web site at http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/research-papers-e.htm.

There has been much discussion on how much leeway these conventions provide to signatory countries in relation to "decriminalizing" cannabis possession offences.[13] For example, a paper prepared for the Senate Special Committee on Illegal Drugs notes that:

> Even if the Single Convention, 1961 requires that possession of cannabis be made an offence, it still allows the Parties latitude as to the sanctions or penalties they impose. The sanctions imposed must have a deterrent effect on the offender or any other individual who might be tempted to commit the same offence. The sanction must be determined on the basis of the seriousness of the offence. In less serious cases, the sanction may even be replaced by measures for treatment, education, rehabilitation or social reintegration.
>
> The Conventions recognize, implicitly and explicitly, that imposing sanctions is a matter within the domestic law of the Parties. Each Party may choose the approach that it considers most appropriate to deal with the various situations that may arise.[14]

---

(13) For example, see Chapters 7 and 9 of *Policy for the New Millennium: Working Together to Redefine Canada's Drug Strategy*, Report of the House of Commons Special Committee on Non-Medical Use of Drugs, December 2002.

(14) Daniel Dupras, *Canada's International Obligations Under the Leading International Conventions on the Control of Narcotic Drugs*, paper prepared for the Senate Special Committee on Illegal Drugs by the Parliamentary Research Branch, Library of Parliament, 20 October 1998; available on the Committee's Web site at http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/research-papers-e.htm. Some of key provisions of the Conventions are the following:

Single Convention, 1961

Article 36 (Penal provisions)

1. (a) Subject to its constitutional limitations, each Party shall adopt such measures as will ensure that cultivation, production, manufacture, extraction, preparation, possession, offering, offering for sale, distribution, purchase, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation and exportation of drugs contrary to the provisions of this Convention, and any other action which in the opinion of such Party may be contrary to the provisions of this Convention, shall be punishable offences when committed intentionally, and that serious offences shall be liable to adequate punishment particularly by imprisonment or other penalties of deprivation of liberty.

(b) Notwithstanding the preceding subparagraph, when abusers of drugs have committed such offences, the Parties may provide, either as an alternative to conviction or punishment or in addition to conviction or punishment, that such abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration in conformity with paragraph 1 of article 38.

Trafficking Convention, 1988

Article 3 (Offences and sanctions)

[...]

2. Subject to its constitutional principles and the basic concepts of its legal system, each Party shall adopt such measures as may be necessary to establish as a criminal offence under its domestic law, when committed intentionally, the possession, purchase or cultivation of

Under Bill C-38, possession of any amount of cannabis will remain illegal and the offender will be subject to a penalty. Thus, there appears to be no doubt that this proposal will continue to meet Canada's obligations under these conventions. In fact, Antonio Maria Costa, director of the United Nations Office on Drugs and Crime, has stated that Bill C-38 complies with the three main conventions.(15)

Many other countries and some U.S. states have adopted measures to "decriminalize" marihuana possession offences. Up to 12 states in the United States have "decriminalized" minor marihuana offences, namely, Alaska, California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, North Carolina, Ohio and Oregon. The laws vary from state to state,(16) but offenders are generally not subject to imprisonment or a criminal record in the case of first-time possession of a small amount for personal consumption. It is important to note that federal drug laws continue to apply in these states.(17)

Certain states in Australia and countries such as Spain, Italy, Portugal, Belgium, Luxembourg, the Netherlands, Germany, Switzerland and Denmark have all adopted measures to "decriminalize" possession of cannabis. Approaches vary; they include not making such actions a crime, and using discretion not to prosecute in certain circumstances. The approach taken by some Australian states (fines for cannabis possession) is the most similar to that proposed in Bill C-38. There are significant differences, however:

(cont'd)

> narcotic drugs or psychotropic substances for personal use contrary to the provisions of the 1961 Convention, the 1961 Convention as amended or the 1971 Convention.
>
> [...]
>
> 6. The Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with this article are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
>
> [...]
>
> 11. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a Party and that such offences shall be prosecuted and punished in conformity with that law.

(15) "UN drug agency endorses Canada's decriminalization bill but has concerns," *Whitehorse Star*, 5 June 2003, p. 10.

(16) See the State By State Laws section on the The National Organization for the Reform of Marihuana Laws Web site at http://www.norml.org/index.cfm.

(17) For more information on the situation in the United States, see Benjamin Dolin, *National Drug Policy: United States of America*, paper prepared for the Senate Special Committee on Illegal Drugs by the Parliamentary Research Branch, Library of Parliament, 24 July 2001; available on the Committee's Web site at http://www.parl.gc.ca/37/1/parlbus/commbus/senate/com-e/ille-e/research-papers-e.htm.

> While there are some similarities with the Australian approach, the Government of Canada proposes a scheme with important differences. First, the Government decided to define small amounts of cannabis at a lower weight level. Second, a person who receives a ticket but does not pay it will not face a criminal conviction. Nor will a person who chooses to challenge a ticket in court, even if they are found guilty. Fines assessed in court will not be higher than those set out on the ticket, as can be the case in Australia. Fines not paid will be collected according to the same provincial rules governing parking or speeding tickets.[18]

F. Medical Use of Cannabis

In the wake of the Ontario Court of Appeal ruling in *R.* v. *Parker* (2000),[19] which found the prohibition of the possession of marihuana in section 4 of the *Controlled Drugs and Substances Act* as it relates to the therapeutic use of marihuana to be unconstitutional, Health Canada adopted new regulations. These regulations establish a framework to allow the possession and cultivation of marihuana by people who are suffering from serious medical conditions for which conventional treatment may not provide adequate symptomatic relief. The *Marihuana Medical Access Regulations* contain two main components: authorizations to possess marihuana, and licences to produce marihuana. Bill C-38 does not deal directly with the therapeutic use of marihuana; consequently, the issue is not discussed further in this paper other than the following brief comments.

Bill C-38 may have some impact on those who claim to use cannabis for therapeutic purposes. Firstly, due to the strict eligibility requirements under the MMAR, many people who claim to use cannabis for therapeutic purposes do not qualify for the legal protection provided by the regulations. Since these people have not been exempted from the possession and production offences, they may be affected by the proposed changes in the legislation.

In addition, the main concern for those who use cannabis for therapeutic purposes is sure to relate to the production of cannabis. As discussed later in this paper, the current maximum punishment for cannabis production – 7 years' imprisonment – is to be replaced by a graduated punishment that varies depending on the amount of cannabis being produced. The maximum penalty would increase to 14 years' imprisonment when the offence involves over 50 plants. Therapeutic users will be concerned that this penalty may deter further production by

---

(18) "Cannabis Reform Bill, Information," Health Canada, last updated on 28 May 2003; available on the Health Canada Web site at http://www.hc-sc.gc.ca/english/media/releases/2003/2003_34.htm.

(19) 49 O.R. (3d) 481.

their known illicit suppliers of cannabis, forcing them to deal with other unknown sources that may include criminal organizations. While those who are eligible under the regulations can obtain a permit to cultivate cannabis for their own purposes (or designate another individual to do it on their behalf), many of them argue they are unable to grow cannabis themselves or find someone who will agree to be their designated grower. In these circumstances, therapeutic users will have no other legal access to cannabis and will be forced to purchase from the "black market." Those who do not satisfy the eligibility requirements of the regulations obviously have no legal access to cannabis.

Access to a secure and safe source of cannabis for therapeutic purposes will continue to be a major issue in Canada. Earlier this year, the Ontario Superior Court of Justice ruled that the MMAR were invalid because they did not properly deal with the question of legal access to cannabis, particularly the lack of legal access to cannabis seeds.[20]

> In particular, the lack of a licit source and supply of marihuana in the *MMAR* makes little sense when it comes to ensuring access, public health and narcotics control. Access is compromised because there is simply no legal way for individuals with production licences to obtain the marihuana seeds required to grow marihuana. Even if it were somehow acceptable for individuals to rely on black market supplies to exercise their constitutional rights, the unreliability of this supply cannot be ignored.
>
> Regarding public health, I find it hard to see this goal being served when seriously ill individuals are forced to rely on black market drug dealers to supply themselves with dried marihuana and seeds. As several of the affidavits sworn in connection with this application explain, one never knows exactly what one is getting when marihuana is bought on the black market. Mould, chemicals and other adulterants are often present. Consorting with criminal drug dealers also strikes me as a relatively risky means of obtaining medicine. And being forced to grow marihuana with a production licence may expose the applicants to home invasion and assault, crimes Mr. Hitzig swears to have suffered in his affidavit.
>
> Forcing medically needy individuals to rely on black market marihuana is also obviously inconsistent with the narcotics control objectives of the *MMAR*. Many applicants end up in this position because they are unable to produce sufficient marihuana on their own, or have not applied for a production licence (PPL or DPL). More fundamentally, even holders of production licences must turn to an illegal supplier to obtain seeds to grow their marihuana medicine. In

(20) *R.* v. *Hitzig* (2003) O.J. No. 12, 9 January 2003.

> short, because they do not provide for a legal source or supply of cannabis, the *MMAR* actually foster the criminal conduct they are supposed to be working against, in conjunction with the *CDSA* and *NCR*.[21]

In its decision, the court declared the order invalidating the MMAR to be suspended for six months to allow the government time to act. The government appealed **the decision, but, as previously stated, the Ontario Court of Appeal upheld this decision. According to the Court, the provisions leading to the absence of a legal supply of medical marihuana, and the requirement for some to obtain authorization from a second specialist, made the MMAR unconstitutional. The Court's response was to strike down the offending provisions. In response to the original decision, the government also announced on 9 July 2003 that it had adopted an interim policy on the provision of marihuana for medical purposes.**

Thus, while Bill C-38 does not directly deal with the use of cannabis for medical purposes, one of its indirect consequences may be to limit the choices of therapeutic users. One of the options available to the government would have been to set reduced penalties for production and distribution when done strictly for therapeutic purposes. Thus, while these activities would have remained illegal, there would have been less serious legal consequences for those participating in them, such as through involvement in one of the several compassion clubs that exist in Canada. This option may have been rejected because of the problems associated with distinguishing between those who legitimately supply marihuana to qualified users for medical purposes and those who would use it as a pretext to conceal other more serious criminal activity. In addition, the factor of genuine medical need would probably be considered by the court in sentencing.

DESCRIPTION AND ANALYSIS

A. *Controlled Drugs and Substances Act*

The *Controlled Drugs and Substances Act* establishes four main offences: possession, trafficking, importing/exporting and production. The purpose of the proposed amendments is to set out new maximum penalties for certain of the offences in relation to

(21) *Ibid.*, Para. 175-177.

cannabis (including both hashish and marihuana). In addition, the government has indicated that the offences in relation to the possession of small amounts of marihuana will be designated as contraventions under the *Contraventions Act*.

1. Clause 5 – Punishments for the Offence of Possession

Clause 5 amends section 4(4) of the Act, which deals with the punishment available for the offence of possession, when the substance involved is cannabis. The new provision specifies that the punishment set out in section 4(4) is subject to the new proposed sections 4(5), 4(5.1), 4(5.2) and 4(5.4). The proposed punishments in relation to the possession of cannabis depend on the amount possessed and the relevant circumstances. They can be broken down as follows:

a. Section 4(4) – General Maximum Punishment for Cannabis Possession
(no change from current law)

Possession of a Schedule II substance (namely, cannabis in all its forms)		
Indictable offence:	5 years' imprisonment less a day	
Summary conviction:	first offence:	$1,000 or six months' imprisonment or both
	subsequent offence:	$2,000 or one year's imprisonment or both

b. Section 4(5) – Maximum Punishment for Possession of a Small Amount of Hashish

Possession of cannabis resin (hashish) in an amount that does not exceed 1 gram	
Summary conviction:	$300 or, in the case of a young person, $200

c. Section 4(5.1) – Maximum Punishment for Possession of a Small Amount of Marihuana

Possession of cannabis (marihuana) in an amount that does not exceed 15 grams	
Summary conviction:	$150 or, in the case of a young person, $100

d. Section 4(5.2) – Maximum Punishment for Possession of a Small Amount of Hashish or a Small Amount of Marihuana in Specified Circumstances

The specified circumstances are as follows:

1. The person is in possession of the substance when he or she operates a motor vehicle, railway equipment, aircraft or vessel; when he or she assists in the operation of an aircraft or railway

equipment; or when he or she has the care or control of a motor vehicle, railway equipment, aircraft or vessel, whether it is in motion or not.

2. The person is in possession of the substance when he or she commits an indictable offence.
3. The person is in possession of the substance in or near a school that is attended primarily by persons under the age of 18 years, or on or near the grounds of such a school.

Possession of cannabis resin (hashish) in an amount that does not exceed 1 gram or possession of cannabis (marihuana) in an amount that does not exceed 15 grams in the circumstances set out above

Summary conviction: $400 or, in the case of a young person, $250

e. Section 4(5.4) – Maximum Punishment for Possession of an Intermediate Amount of Marihuana

Possession of cannabis (marihuana) in an amount that exceeds 15 grams but is not more than 30 grams

Summary conviction: $1,000 or six months' imprisonment or both (same penalty as for the current offences of possession of not more than 1 gram of hashish or not more than 30 grams of marihuana)

Contravention: $300 or, in the case of a young person, $200

The proposed new punishments set out in sections 4(5), 4(5.1), 4(5.2) and 4(5.4) would replace the current punishment for possession of a small to intermediate amount of cannabis. Under current legislation, possession of cannabis resin (hashish) in an amount that does not exceed 1 gram, or possession of cannabis (marihuana) in an amount that does not exceed 30 grams, is a summary conviction offence that carries a maximum punishment of $1,000 or six months' imprisonment or both. This punishment would no longer apply if the *Controlled Drugs and Substances Act* is amended as proposed.

The proposed new offences are strictly summary conviction offences, with the exception of possession of cannabis (marihuana) in an amount that exceeds 15 grams but is not more than 30 grams; this could also be treated as a contravention under the *Contraventions Act*. In all these cases, a person would not be subject to fingerprinting or photographs, as the *Identification of Criminals Act* applies only in cases of indictable offences, including hybrid offences where the Crown has the option of proceeding either by summary conviction or on indictment. This is also the case for the current offence of possession of a small to intermediate

amount of cannabis (not more than 1 gram of cannabis resin (hashish) or 30 grams of marihuana), since it, too, is a strictly summary conviction offence.

Clause 5 specifies that for the purposes of the new punishments, the amount of the substance means the entire amount of any mixture or substance, or the whole of any plant, that contains a detectable amount of the substance. This is the same as the current rule for determining the amount of cannabis that a person possesses.

Finally, clause 5 sets out a new provision that recognizes that the offences for possession of small amounts of cannabis may be designated as contraventions under the *Contraventions Act* with respect to a province. If there is such a designation and the Governor in Council makes regulations under section 65.1(1) of the *Contraventions Act*, the provision specifies that the offence shall be prosecuted in that province as a contravention by means of a ticket.

The stated purpose of these reforms to the punishment for marihuana possession offences is to:

- modify the penalties for marihuana possession to offer a range that ensures that the punishment available is appropriate to the seriousness of the crime;
- avoid the complications and expense of the criminal process for minor offences, resulting in more effective use of justice system resources;
- discourage the use of cannabis through higher rates of enforcement of cannabis possession offences. A more effective response will allow police to use a ticket where in the past they might have issued a warning; and
- address the current differential treatment of those who commit cannabis possession offences, for example between rural and urban jurisdictions, across the country, which results in inconsistent treatment of offenders under the law.[22]

The first two objectives appear to have been satisfied by the reforms to the punishment that would apply to possession of small to intermediate amounts of cannabis. The third objective is to discourage the use of cannabis through higher rates of enforcement. This is interesting, given that the police have been criticized in the past for focussing too much of their attention on cannabis possession offences. If the experience in Australia is any indication, there is a strong probability that making possession of cannabis a ticketable offence will lead to higher

(22) Health Canada, News Release, "Renewal of Canada's Drug Strategy to Help Reduce the Supply and Demand for Drugs," 27 May 2003.

rates of enforcement. This approach is likely to be criticized by those who believe that enforcement is not the best tool to discourage use. Many argue that it is marihuana's illegal status that makes it so attractive to young persons. With regard to the fourth objective, the current differential treatment of those who commit cannabis possession offences across the country has been strongly criticized in the past, and it is not surprising that the bill attempts to address this concern.

The bill clearly recognizes the stigma associated with a criminal conviction and attempts to lessen the effects on an individual for the offence of possession of small amounts of marihuana. A criminal conviction can severely affect a person's education, employment, travel, etc. In addition, involvement in the criminal justice system can be very costly and entail significant personal upheaval.

2. Clause 6 – Punishments for the Offence of Production

Under the current Act, production of marihuana is an indictable offence and the offender is liable to imprisonment for a term not exceeding seven years. Clause 6 repeals this punishment and substitutes a graduated punishment that is based on the amount of plants produced.

One of the significant amendments made by the Special Committee (C-38) was to modify the punishment for the offence of production from not more than three marihuana plants. The original punishment for this offence was a fine of $5,000 or 1 year's imprisonment, or both. The Committee opted to make this an offence that may be designated as a contravention under the *Contraventions Act* with respect to a province, as is the case for possession of small amounts of cannabis. If there is such a designation and the Governor in Council makes regulations under section 65.1(1) of the *Contraventions Act*, clause 6 specifies that the offence shall be prosecuted in that province as a contravention by means of a ticket.

a. Section 7(3)(a) – Maximum Punishment for Production of Cannabis – Not More Than 3 Marihuana Plants

Production of cannabis (marihuana) from not more than 3 plants

Summary conviction: **$500 or, in the case of a young person, $250**

b. Section 7(3)(b) – Maximum Punishment for Production of Cannabis – 4-25 Marihuana Plants

Production of cannabis (marihuana) from more than 3 plants but not more than 25 plants

Indictable offence: 5 years' imprisonment less a day

Summary conviction: $25,000 or 18 months' imprisonment or both

c. Section 7(3)(c) – Maximum Punishment for Production of Cannabis – 26-50 Marihuana Plants

Production of cannabis (marihuana) from more than 25 plants but not more than 50 plants

Indictable offence: 10 years' imprisonment

d. Section 7(3)(d) – Maximum Punishment for Production of Cannabis – More Than 50 Marihuana Plants

Production of cannabis (marihuana) from more than 50 plants

Indictable offence: 14 years' imprisonment

One of the stated purposes of this graduated punishment is to address the increasing problem of large-scale marihuana growing operations and the export of illegal drugs across the Canada-U.S. border.[23] Consequently, an offender who produces 25 plants or fewer is liable to a lower maximum penalty, while those producing more than 25 plants are liable to higher maximum penalties. The Facts and Figures section of this paper provides some statistics in relation to sentencing of production offences. In the past, there have been complaints that such sentences have tended to be fairly lenient. Bill C-38 sends a message to the courts that these offences should be treated more seriously, particularly when larger amounts are involved. In certain specific circumstances, a court would have to provide reasons why **a custodial sentence** is not appropriate. (See the discussion of clause 7, below.) It is interesting to note that the bill does not set out any minimum sentences, even when fairly large amounts are involved.

Ironically, one of the possible consequences of heavier penalties may be to tighten the grip of organized crime on production. It is doubtful that members of criminal organizations

(23) *Ibid.*

would be concerned about heavier penalties. The opposite is probably true, however, for those who produce marihuana on a smaller scale. If some of these small producers decided to cease their operations, criminal organizations or other more sophisticated producers would surely fill the vacuum. Police and others have often noted that more potent strains of marihuana are now available on the streets. Many of these strains are produced by more sophisticated producers who have more resources available to them. It is thus possible that the potency of marihuana sold on the street could rise if smaller producers decide to stop production.

Significantly, Bill C-38 **did** not provide for the "decriminalization" of the production of marihuana, even in fairly small amounts. This **would have meant** that a person who **decided** to consume marihuana **ran** less risk by acquiring small amounts of marihuana from others, including from criminal organizations, than by producing small amounts for himself or herself. Whereas possession of small amounts of marihuana would be treated as a contravention once the proposed amendments are adopted, all production offences would **have entailed** prosecution under the criminal justice system and the consequences that ensue. **As stated previously, the Special Committee (C-38) opted to make production from not more than three plants an offence that can be designated as a contravention, thus "decriminalizing" production in those circumstances.**

3. Clauses 7-10 – Other Amendments

Clause 7 makes a housekeeping amendment to section 10(2)(a)(iii) of the Act, dealing with aggravating factors that must be considered by a court imposing a sentence. It also sets out a new provision that lists other factors that must be considered by a court imposing a sentence in relation to **production from** more than three cannabis (marihuana) plants. These additional factors are whether:

- the person used real property that belongs to a third party to commit the offence;
- the production constituted a potential security, health or safety hazard to children who were in the location where the offence was committed or the immediate area;
- the production constituted a potential public safety hazard in a residential area; and
- **the person set or placed a trap, device or other thing that is likely to cause death or bodily harm to another person in the location where the offence was committed or the immediate area or, if the person occupied or was in possession of the location where the**

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

offence was committed or the immediate area, he or she permitted such a trap, device or other thing to remain in that location or area.

A court that is satisfied of the existence of one or more of the factors in section 10 but decides not to sentence the offender to **a custodial sentence** must provide reasons for that decision. This amendment is intended to send a message to the courts that growing operations are a serious concern in Canada, particularly in cases involving the factors listed above. These factors are among the most severe problems that result from such operations. Nonetheless, even when these factors exist, no minimum penalty is specified. It should be noted that one of the purposes of Bill C-32, An Act to amend the Criminal Code and other Acts, which is also currently before Parliament, is to increase the maximum available penalties for the offence of setting a trap or device "with intent to cause death or bodily harm to persons." The elements of this offence are very similar to the last of the four aggravating factors that must be considered in sentencing for the production offence under Bill C-38.

Clause 8 is another housekeeping amendment. Clause 9 replaces Schedule VIII of the *Controlled Drugs and Substances Act* with a revised schedule setting out the punishments applicable to cannabis possession offences.

4. Other Offences

Bill C-38 does not propose changes to the other main offences under the *Controlled Drugs and Substances Act*. Among other things, this means that the government does not propose to "decriminalize" the offence of trafficking, even in cases where a person conducts this activity with minimal or no economic gain and in regard to a limited number of people. Thus, people who "share" marihuana may be found guilty of an indictable offence and liable to imprisonment for a term of five years less a day (in cases involving less than three kilograms).

One probable reason for the government's decision not to propose amendments in this area is the difficulty in setting out a list of factors that would clearly distinguish "recreational" traffickers from more serious offenders. An attempt to treat the two groups differently would likely make trials more complex and the burden on the Crown impracticable.

B. *Contraventions Act*

As previously stated, the government has indicated that the offences in relation to the possession of small amounts of marihuana will be designated as contraventions under the *Contraventions Act*. **(With the amendments made by the Special Committee (C-38), this**

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

would also be the case for production from not more than three plants.) This Act, adopted in 1992, created new, simplified procedures for dealing with selected federal offences, as an alternative to the summary conviction procedure set out in the *Criminal Code*. Under this Act, offences can be designated as "contraventions" by regulations. It does not, however, create any new offences. One of the original goals of the Act was to distinguish between more serious criminal offences and other less serious federal offences.

The Act was amended in 1996 to allow the use of existing provincial and territorial ticketing schemes to process the less serious federal offences. In addition, the Act allows the federal government to enter into agreements with provinces and territories under which they will administer and enforce the Act.

The stigma associated with criminal offences is lessened in the case of ticketable offences – and clause 5(3) of Bill C-38 provides that the proposed marihuana possession offences are to be ticketable offences. **(Pursuant to clause 6(4), this would also be the case for production from not more than three plants.)** Some of the consequences of a designation as a ticketable offence under the *Contraventions Act* are as follows:

an accused person is not required to appear in court to plead guilty;

- a person convicted of a contravention has not been convicted of a criminal offence, and the contravention does not constitute an offence for the purposes of the *Criminal Records Act* (section 63);

- it is an offence to use an application form in relation to federal government employment, or employment with a business that is within the legislative authority of Parliament, that contains a question that by its terms requires the applicant to disclose a conviction for a contravention (section 64);

- there is a partial abolition of the royal prerogative to refuse to issue a passport, or to revoke a passport, on the grounds of contraventions or offences committed outside Canada that, if committed in Canada, would constitute a contravention (section 65);

- a witness may not be questioned as to whether he or she has been convicted of an offence designated as a contravention (section 12 of the *Canada Evidence Act*);

- a person shall not be granted citizenship or take the oath of citizenship while the person is charged with, on trial for, or subject to or a party to an appeal relating to an indictable offence under any Act of Parliament, other than an offence that is designated as a contravention; in addition, a person shall not be granted citizenship or take the oath of citizenship if, (a) during the three-year period immediately preceding the date of the person's application, or (b) during the period between the date of the person's application and the date that the person would otherwise be granted citizenship or take the oath of citizenship, the

person has been convicted of an indictable offence under any Act of Parliament, other than an offence that is designated as a contravention (section 22 of the *Citizenship Act*), and

- inadmissibility on grounds of serious criminality may not be based on an offence designated as a contravention (section 36 of the *Immigration and Refugee Protection Act*).

Some significant provisions of the *Contraventions Act* are not being amended. They include the following:

- a power of arrest in respect of an offence may be exercised even though the offence is designated as a contravention (section 7);
- the Act allows, by regulation, the setting of different fees or fines in respect of each province; while the fees or fines may not exceed the maximum amount established by the legislation setting out the offence, nothing prohibits lowering them unless a minimum amount is established by that legislation (no minimum amount has been set for the proposed marihuana possession offences) (section 8);
- a person who is convicted in a proceeding commenced by means of a ticket – as would be the case for the proposed marihuana possession offences – is not liable to imprisonment (section 42(3));
- where a ticket is served in respect of a contravention, an information under the *Criminal Code* may not be laid in respect of that same contravention (section 54);
- when a fine is not paid within the prescribed time, the conviction may be filed in any civil court in Canada that has jurisdiction, and is enforceable against the person in the same manner as if it were a judgment obtained against the person (section 58); and
- when a fine is not paid within the prescribed time, federal licences and permits and registration of establishments may be refused, suspended or revoked if they are related to the contravention (section 59).

Another significant provision is section 26 of the *Youth Criminal Justice Act*, which provides that a person who serves a ticket under the *Contraventions Act* on a young person – other than a ticket served for a contravention relating to parking a vehicle – shall, as soon as possible, give or cause to be given notice in writing of the ticket to a parent of the young person. Thus, parents would be notified if a young person is ticketed for a marihuana possession offence **or for production from not more than three plants**.

While the general premise of the Act is straightforward, two key developments make a review of this legislation more difficult. The first is the fact that many of the provisions of the Act have yet to be proclaimed into force. The main reason for this situation is that, as

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

mentioned above, the Act was amended in 1996 to allow the use of existing provincial and territorial ticketing schemes to process selected federal offences; this avoided an overlap between federal and provincial systems. Thus, provisions in the *Contraventions Act* dealing with the service of tickets, contents of tickets, commencement of proceedings, options that are available to the defendant, trial procedure and others are not applicable at this time. There are currently no plans to set up a parallel federal enforcement system.

The second is the fact that agreements regarding the administration of the Act have been signed with only six provinces – Ontario, Quebec, Manitoba, Prince Edward Island, New Brunswick and Nova Scotia. The government states that it will pursue agreements with the remaining provinces and territories. In jurisdictions without agreements, prosecution would continue through the court system and the enabling legislation creating the offence provides for penalties that may be imposed by the court.

The following paragraphs deal with the proposed amendments to the Act.

1. Clause 1 – Purposes of the *Contraventions Act*

Clause 1 of Bill C-38 amends section 4 of the *Contraventions Act*, which sets out the Act's purposes. Currently, those purposes are to provide a procedure for the prosecution of contraventions that reflects the distinction between criminal offences and regulatory offences, and is in addition to the procedures set out in the *Criminal Code* for the prosecution of contraventions and other offences; and to alter or abolish the consequences in law of being convicted of a contravention, in light of that distinction. Section 8 of the *Contraventions Act* provides that an offence, other than an offence that may be prosecuted only on indictment, may be designated as a contravention. Offences that have been designated as contraventions are in relation to the following acts and their regulations: the *Canada Marine Act*; the *Canada National Parks Act*; the *Canada Shipping Act*; the *Canada Wildlife Act*; the *Canadian Environmental Protection Act, 1999*; the *Department of Transport Act*; the *Government Property Traffic Act*; the *Migratory Birds Convention Act, 1994*; the *National Capital Act*; the *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act*; the *National Defence Act*; the *Non-Smokers' Health Act*; the *Radiocommunication Act*; the *Railway Safety Act*; the *Motor Vehicle Transport Act, 1987*; the *Navigable Waters Protection Act*; and the *Tobacco Act*.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

Since offences under the *Controlled Drugs and Substances Act* – offences that are criminal in nature – are to be designated as contraventions under the *Contraventions Act*, it was thought that the purposes of that Act should be clarified. Thus, the new purposes of the *Contraventions Act* are to provide a procedure for the prosecution of contraventions that is in addition to the procedures set out in the *Criminal Code*, and to alter or abolish the consequences in law of being convicted of an offence, if that offence is designated as a contravention. The end result is to remove any reference to the distinction between criminal and regulatory offences. The scope of offences to which the Act applies does not change, however.

2. Clause 2 – Relationship With Other Legislation, and Method of Prosecution

Clause 2 amends section 5 of the *Contraventions Act* to specify the relationship with other Acts of Parliament. It states that all of the *Criminal Code* (rather than only those provisions of the Code relating to summary conviction offences, as set out in current section 5) and the *Youth Criminal Justice Act* apply, with any modifications that the circumstances require, to proceedings under the Act. An exception would occur only where the *Contraventions Act*, the regulations or the rules of court provide otherwise.

One of the concerns that has been raised with respect to the *Contraventions Act* is in relation to bilingualism. The federal government relies on the provinces and territories to administer and enforce the Act and make applicable provincial legislation in this regard, including provisions dealing with language rights, if any. Section 30 of the *Contraventions Act* does deal with language rights. It states:

> The choice of a defendant in responding to a ticket as to the official language, being the defendant's language, in which the defendant wishes to be tried is deemed to be an order granted under section 530 of the *Criminal Code* and accordingly sections 530.1 and 531 of that Act apply in respect of the choice.

This provision has not yet been proclaimed into force, however, and it is not one of the provisions that automatically applies pursuant to section 165.1 of the *Contraventions Act*. The amendment to section 5 is in response to a decision of the Federal Court regarding official languages and the *Contraventions Act*.

> On March 23, 2001, the Federal Court (Trial Division) rendered its decision in the *Commissioner of Official Languages* v. *Her Majesty the Queen (Department of Justice of Canada)* case concerning the

> implementation of the *Contraventions Act* in Ontario. The Court essentially declared that the measures taken by the Department of Justice in applying the *Contraventions Act* and in negotiating its agreement with the Government of Ontario did not protect properly the quasi-constitutional language rights provided by sections 530 and 530.1 of the *Criminal Code* and Part IV of the *Official Languages Act*. While it recognized that the *Contraventions Act* was perfectly valid, the Court ordered the Government "to take the necessary measures, whether legislative, regulatory or otherwise, to ensure that the quasi-constitutional language rights provided by sections 530 and 530.1 of the *Criminal Code* and Part IV of the *OLA*, for persons who are prosecuted for contraventions of federal statutes or regulations, are respected in any present or future regulations or agreements with other parties that relate to the responsibility for administering the prosecution of federal contraventions." Also, the Court gave the government one year to amend accordingly its agreement with Ontario.[24]

The purpose of the amendment to section 5 is to ensure the applicability of sections 530 and 530.1 of the *Criminal Code* in relation to proceedings under the *Contraventions Act*. With respect to language rights provided by Part IV of the *Official Languages Act*, the government has indicated that this issue will be addressed in the agreements signed with the provinces and in the regulations made under the *Contraventions Act*. The Commissioner of Official Languages has indicated that a simple recognition of language rights within agreements does not suffice: it would not allow an accused person to halt proceedings that do not respect his or her language rights.[25] According to the Department of Justice, the regulations under the Act are in the process of being amended to reflect the Court's decision.

Clause 2 also adds a new section 6 to clarify that a contravention may be prosecuted by means of either a summons or a ticket, unless another Act of Parliament provides that it shall be prosecuted by means of a ticket only – as is the case for the marihuana possession offences (see clause 5) **and the offence of production from not more than three plants (see clause 6).**

---

(24) *Contraventions Act* – Digest, prepared by the Contraventions Project team of the Department of Justice, March 2002, p. 4. In March 2002, the Federal Court authorized an additional delay of one year to implement its decision.

(25) Commissioner of Official Languages, *Annual Report, 2001-2002*.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

3. Clause 3 – Maximum Fines for Contraventions by Young Persons

Clause 3 deals with maximum fines that are payable by young persons. Currently, section 8(4) of the *Contraventions Act* provides that if a young person commits a contravention, the fine may not exceed $100, unless it is a contravention relating to parking a vehicle. The new provision states that this general rule is subject to any other Act of Parliament. This amendment is required because some of the penalties under the *Controlled Drugs and Substances Act* that are applicable to young persons exceed $100.

4. Clause 4 – Application of Provincial Legislation

Clause 4 deals with the application of provincial legislation to contraventions. Section 65.1 of the *Contraventions Act* provides that the Governor in Council may make regulations whereby provincial legislation that relates to proceedings in respect of offences that are created by a law of the province is made applicable to any contravention alleged to have been committed in, or otherwise within the territorial jurisdiction of the courts of, a province. The Act also permits the Governor in Council to adapt any provision, or any part of a provision, of provincial legislation. Thus, provisions that are in conflict with the principles of the *Contraventions Act* can be adapted.

Clause 4 specifies that, in cases where provincial laws are made applicable to a contravention, certain provisions of the *Contraventions Act* automatically apply in respect of the contravention; the provisions refer to the sections of the Act that are currently in force. A new feature allows the Governor in Council to make any other provision of the Act apply to a contravention. Finally, it is specified that the remainder of the Act that is not made applicable to a contravention does not apply.

The main advantage of enforcing federal offences via the *Contraventions Act* is the reduced costs for government and individuals. In addition, an offender avoids many of the negative consequences that result from being convicted of a criminal offence.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

5. Criminal Records and the Canadian Police Information Centre

One significant consequence generally entailed by a criminal conviction is the creation of a criminal record. Not everyone agrees, however, on what constitutes a "criminal record."

The RCMP's Criminal Records Information Management Service is responsible for the criminal record files maintained on the Canadian Police Information Centre (CPIC) system. CPIC is an automated central repository operated by the RCMP on behalf of the law enforcement community. It contains four databases: Identification (criminal records); Investigative (vehicle, marine, person and property files); Ancillary; and Intelligence.

An offence will be recorded on a person's criminal record file[26] only if the person has been fingerprinted and photographed. Section 2 of the *Identification of Criminals Act* states that only certain people may be fingerprinted or photographed. They include: a person who is in lawful custody and charged with, or convicted of, an indictable offence (this includes hybrid offences, where the Crown has the option of proceeding by way of summary conviction or indictment); and a person alleged to have committed an indictable offence and who is required, pursuant to subsection 501(3) or 509(5) of the *Criminal Code*, to appear for the purposes of the *Identification of Criminals Act* by an appearance notice, promise to appear, recognizance or summons.

Fingerprints and photographs may not be taken for offences that are strictly summary conviction offences; thus, these offences are generally not recorded on a person's file. The offence of possession of small amounts of cannabis has been a strictly summary conviction offence since 14 May 1997, although it had previously been a hybrid offence that was recorded on a person's file. An exception occurs when a person is charged or convicted of a strictly summary conviction offence in connection with another offence that is an indictable offence. In that case, the strictly summary conviction offence is recorded on the person's file with the other offence.

Even though the RCMP does not generally record strictly summary conviction offences on a person's file, the person in question has nonetheless been convicted of an offence. Such a conviction entails significant negative consequences that can be removed only if the person obtains a pardon for the offence under the *Criminal Records Act* (see section 4.1(2)). This Act applies to a person who has been convicted of an offence under an Act of Parliament or

(26) A criminal record file is created at the time of a person's first criminal offence.

a regulation made under such an Act (section 3(1)). A pardon is evidence of the fact that the conviction should no longer reflect adversely on the person's character; it requires the judicial record of the conviction to be kept separate and apart from other criminal records and removes any disqualification to which the person so convicted is, by reason of the conviction, subject by virtue of the provisions of any Act of Parliament or its regulations – other than certain prohibition orders. All criminal records of persons who receive a pardon are removed from CPIC and sealed, and are not available to CPIC queries. While offences related to the possession of small amounts of cannabis committed after 14 May 1997 would not be recorded on a person's file, those committed before this date would be recorded and would not be sealed unless the person has obtained a pardon.

Also of significance is CPIC's Investigative database, which contains information in relation to people who are before the justice system; these are people who have been charged with an offence but for whom there has not yet been a disposition. This database contains information on both indictable offences and strictly summary conviction offences, and would therefore contain information on cannabis possession offences.

It is also important to note that certain agencies of the U.S. government have restricted access to the CPIC system. If those agencies run a query on a person while that person has a record on CPIC, the findings will create a permanent record in the databases controlled by the U.S. government. These databases are not governed by Canadian legislation, and the United States is under no obligation to recognize a pardon that is granted in Canada. This situation would certainly be of concern for those who committed an offence in relation to the possession of small amount of cannabis in Canada prior to 14 May 1997. It is estimated that there are 600,000 Canadians with a criminal record for the possession of small amounts of cannabis. Even for an offence of possession committed after this date (when it became a strictly summary conviction offence), a record may be created in U.S. databases if the query is done while the person is before the justice system.

One of the consequences of designating the possession of small amounts of cannabis as a contravention under the *Contraventions Act* is that a person convicted of a contravention has not been convicted of a criminal offence. The contravention does not constitute an offence for the purposes of the *Criminal Records Act* (section 63 of the *Contraventions Act*). Thus, there would be no need to obtain a pardon for committing such an act, and the contravention would not be recorded on the person's file.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

The disclosure of criminal records and information that is contained in police databases in relation to the offence of possession of small amounts of cannabis was of great concern to Committee members and to many of the witnesses who appeared before the Committee. Of particular concern was the sharing of information with enforcement agencies from other countries. The Special Committee (C-38) thus amended the bill to add a new clause 3.1. This new section makes it an offence to knowingly disclose information contained in Canadian law enforcement databases in relation to the offence of possession of small amounts of cannabis, or the offence of production from not more than three plants, to a foreign government or international organization, or their agent.

C. Review

The Special Committee (C-38) also added a new clause requiring the government to conduct a comprehensive review of the effects of the alternative penalties on Canadian society three years after the Act has come into force.

D. Coming Into Force

Clause 10 provides that the provisions of Bill C-38, and the provisions of any Act that are enacted by Bill C-38, come into force on a day or days to be fixed by order of the Governor in Council.

E. Canada's Drug Strategy

The federal government launched Canada's first drug strategy in 1987, funded by $210 million to be spent over five years. The goal was to provide a balanced approach to reducing both the demand for, and supply of, drugs. The strategy was based on four pillars: education and prevention; enforcement and control measures; treatment; and research and information.

The strategy, which has always been under the leadership of Health Canada, was renewed in 1992 with funding increased to $270 million over five years. Due to budgetary constraints, however, only about $100 million was spent over this period. In 1998, the strategy was renewed in principle but without any specified funding. Its present four pillars are: prevention; enforcement and control; treatment and rehabilitation; and harm reduction. The Drug Strategy and Controlled Substances Program's budget in Health Canada is $34 million

annually. It should be noted that Health Canada spends additional resources on substance abuse through its various other programs.

The need for a well-funded strategy was raised in recent reports by several federal bodies: the Auditor General of Canada (December 2001); the Senate Special Committee on Illegal Drugs (September 2002); and the House of Commons Special Committee on Non-Medical Use of Drugs (December 2002). In response, the government announced a renewal of Canada's Drug Strategy, with funding of $245 million over the next five years, on the day Bill C-38 was tabled in the House of Commons. The government states that the strategy will be implemented in partnership with provinces, territories, communities and stakeholders, and will retain its balanced approach to reducing both the demand for, and supply of, drugs. Highlights of the strategy include:

- community-based initiatives to address a range of prevention, health promotion, treatment and rehabilitation issues;
- public education campaigns on substance abuse with the specific focus on youth;
- new funding for research activities on drug trends, to enable more informed decision-making;
- a biennial, national conference with all stakeholders to set research, promotion and prevention agendas; and
- new resources to help decrease the supply of illicit drugs.[27]

Government information on this initiative states that the strategy and the proposed reforms to the cannabis laws together ensure a balanced approach that deals with prevention, education and treatment on the one hand and increased enforcement on the other. These reforms are not intended to encourage drug use or normalize the use of cannabis. The goal of the strategy is to "have all Canadians live in a society increasingly free of the harms associated with substance abuse by reducing both the demand for, and supply of, drugs."[28]

It is impossible to provide an analysis of the renewed strategy without first receiving additional details on how it is to be implemented. Thus, the following comments are restricted to general issues that are sure to be raised by stakeholders.

---

(27) Health Canada, News Release, "Renewal of Canada's Drug Strategy to help reduce the supply and demand for drugs," 27 May 2003.

(28) Health Canada, "Canada's Drug Strategy, Information," May 2003.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

As previously stated, the government asserts that the new strategy maintains a balanced approach to reducing both the demand for, and supply of, drugs. Many are sure to question whether the federal government ever had a balanced approach. In a 2001 report, the Auditor General indicated that of the approximately $500 million spent annually by 11 federal departments to address illicit drug use in Canada, roughly 95% was spent on supply reduction. Others may question whether the $245 million allocated to the renewed strategy is in addition to the funds currently being spent. For example, is the current budget managed by the Drug Strategy and Controlled Substances Program included in this total? In addition, what percentage of the resources is to be allocated to demand reduction, and how much to supply reduction?

One element of the new strategy that is sure to be welcomed by stakeholders is the commitment to provide new funding for research activities to enable more informed decision-making, including research on drug trends. Many have complained in the past that research and knowledge development have been practically non-existent and that we do not have the tools needed to make informed decisions.

The increased role to be played by the Canadian Centre on Substance Abuse (CCSA) should also be well received. This organization is to play a pivotal role in coordinating the research discussed above. It will also produce an annual "state of the union" report on addictions in Canada. The CCSA has stated that national prevalence studies will be critical in assessing the ongoing impact of changes to cannabis legislation, and in setting priorities for addressing the harm related to all forms of substance abuse and addictions.[29] It has also announced that it will lead the organization of a national conference every two years to gather input from key stakeholders on priorities for future action to reduce addictions-related harm.[30]

Health Canada's leadership of the drug strategy has been criticized in the past, notably by the Auditor General and both parliamentary committees. To rectify this problem, the House of Commons Special Committee on Non-Medical Use of Drugs had recommended the appointment of a Canadian Drug Commissioner who would be authorized to monitor, investigate and audit the drug strategy and to report annually to Parliament with any appropriate recommendations. Similarly, the Senate Special Committee on Illegal Drugs recommended the creation of a position of National Advisor on Psychotropic Substances and Dependency. The Advisor would be responsible for advising the Cabinet and the Prime Minister, ensuring

---

(29) CCSA, News Release, "Impact of cannabis reform will need to be closely monitored, says Canada's national addictions agency," 27 May 2003.

(30) *Ibid.*

coordination among federal departments, overseeing the development of objectives, and ensuring that the objectives were met.

These recommendations have not been implemented – a fact that may increase stakeholders' concerns about leadership and accountability. A positive step in this area, however, is the government's commitment to report every two years to Parliament and Canadians on the strategy's direction and progress, particularly with respect to its objectives to:

- decrease the prevalence of harmful drug use;
- decrease the number of young Canadians who experiment with drugs;
- decrease the incidence of communicable diseases related to substance abuse;
- increase the use of alternative justice measures such as drug treatment courts;
- decrease the illicit drug supply and address new and emerging drug trends; and
- decrease avoidable health, social, and economic costs.(31)

COMMENTARY

Legislation dealing with drug laws is sure to be controversial. People have fundamentally divergent views on how those who consume illegal drugs should be dealt with. Some view the consumption of drugs as a personal choice that does not harm others or society; therefore, they argue it should not be made illegal. Others, who are concerned about the effects of drugs on individuals and society as a whole, see a clear role for the criminal justice system in this regard. In addition, some see drug consumption as a health problem, and view prevention and treatment as the keys to reducing it. Finally, there are others who advocate a system where a balance is provided between prevention, treatment and enforcement. The controversial nature of this legislation is underlined by the fact that the Minister of Justice raised the possibility of amendments to the proposed legislation only a few days after it was tabled.(32)

Police organizations have raised several concerns in relation to the depenalization of possession of small amounts of cannabis. The Canadian Police Association (CPA) is concerned that imprisonment may not be available as a possible punishment even in cases where there are aggravating factors, such as consumption of cannabis in association with young persons, while imprisoned, or in association with driving a vehicle, and in relation to repeat offenders.(33) The CPA argues that punishment must be meaningful, appropriate and graduated,

---

(31) Health Canada, "Canada's Drug Strategy, Information," May 2003.

(32) "La Loi sur le cannabis pourrait subir des ajustements," *La Presse*, 31 May 2003, p. A16.

(33) "Pot bill will allow for driver testing: Cauchon," *CTV.ca*, 28 May 2003.

and that discretion to apply the law in accordance with the individual circumstances of a case is required.[34] Its executive director, David Griffin, has also expressed concern that the legislation sends the wrong message to young persons and may encourage use,[35] and that insufficient resources are allocated to the fight against growing operations.[36] Of particular concern to the CPA is the lack of tools given to police to deal with impaired drivers.[37]

The issue of impaired driving is obviously of particular concern to Mothers Against Drunk Driving (MADD). MADD has argued that this legislation should not move forward until there is a way for police to deal with drivers who have consumed cannabis.[38] The organization has pointed out that police cannot demand a roadside test for cannabis use in the same way that they can demand a breathalyser test for alcohol use, and it is pressing for changes to the legislation that would allow police to demand a saliva, urine or blood test. It should be noted that these concerns exist whether or not possession of small amounts of cannabis is depenalized.

It is clear that driving while impaired by alcohol or drugs, including cannabis, remains an offence. The government has indicated that one approach to this problem involves the training of law enforcement officers to recognize the effects of drug impairment. Canada's Drug Strategy provides additional funding of $910,000 to continue work in this area. The Canadian Association of Chiefs of Police (CACP), meanwhile, has argued that this funding for additional drug recognition training for police is "woefully inadequate." The CACP supports the continued message that drugs are harmful and the targeting of commercial marihuana growing operations. However, it has outlined the following concerns about the proposed legislation: the structure of fines for possession of cannabis does not provide penalties that are meaningful, appropriate and with graduated consequences; it does not set out appropriate penalties for people in high-risk occupations, such as airline pilots, who consume drugs in the course of their duties; and, the removal of discretion to use the criminal justice system in cases of possession of small amounts of cannabis eliminates options such as the drug treatment courts and directed treatment.[39]

---

(34) Canadian Police Association, Open Letter to the Prime Minister of Canada concerning drug use in Canada, 7 May 2003; available on the CPA Web site at www.cpa-acp.ca.

(35) "U.S., Canadian police oppose pot bill," *CBC.ca*, 28 May 2003.

(36) *Ibid.*

(37) Canadian Police Association (7 May 2003).

(38) "Critics say pot law sends the wrong message," *CTV.ca*, 27 May 2003.

(39) Canadian Association of Chiefs of Police, News Release, "Re: Cannabis Reform," 27 May 2003.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

Those in favour of relaxed cannabis legislation, on the other hand, feel that the proposed legislation does not go far enough. Marc Emery, president of the BC Marijuana Party, has stated that "We think it's absurd that there should be any limits placed on growing or selling or possessing marijuana."(40) This view is shared by many pro-legalization activists. Concern has also been expressed that cannabis users will be seen as a source of revenue by governments.(41)

The legislation is also sure to raise the spectre of retaliation by the U.S. government. For example, the director of the White House Office of National Drug Control Policy (the Drug Czar), John Walters, has indicated that he believes this legislation would create problems at the Canada-U.S. border and could affect the movement of trade between the two countries.(42) These comments reflect his view that liberalizing marihuana laws in Canada would result in more pot crossing the border and would increase drug use, both in Canada and potentially in the United States. Not everyone in the United States agrees, however. Ethan Nadelman, executive director of the Drug Policy Alliance, an organization aimed at promoting new drug policies, has stated that "The best research tends to show that the decriminalization of marijuana has little to no impact on levels of use."(43) He added that U.S. fears are unfounded and that "the U.S. is opposed to more lenient marijuana laws in Canada because they would highlight how out-of-touch the stricter American laws are in comparison to much of the Western world."(44) The Canadian government did take the unusual step of briefing the U.S. government on its proposed amendments before Bill C-38 was tabled in the House of Commons. The Minister of Justice has indicated that no changes were made to the proposed legislation as a result of the meetings with U.S. officials.(45) It should be noted that many U.S. states have decriminalized possession of cannabis.

The Canadian Medical Association (CMA) has welcomed Canada's Drug Strategy's commitment to prevention and treatment, but has concerns in relation to funding. "The federal government's proposed national drug strategy provides the appropriate framework to address illicit drug use and addiction, but the question remains whether there are enough dollars behind it to have a meaningful impact" stated the Association's president, Dana

---

(40) "Pot bill will allow for driver testing: Cauchon," 28 May 2003.

(41) "Drug scheme full of mixed messages; Users will be cash cows," *Toronto Star*, 28 May 2003, p. A1.

(42) "U.S., Canadian police oppose pot bill," 28 May 2003.

(43) *Ibid.*

(44) "U.S. expert: Marijuana concerns 'overblown,'" *CTV.ca*, 19 May 2003.

(45) "La loi sur le cannabis pourrait subir des ajustements," 31 May 2003.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

Hanson.[46] The CMA had recommended $430 million over three years.[47] The Association states that the proposed new drug strategy addresses many of the key elements it has requested, including prevention and education programs, treatment and rehabilitation programs, a rigorously monitored evaluation system and addiction research. "The development of measurable goals, ongoing and meaningful stakeholder involvement in the development and monitoring of the national drug strategy, and the accountability provisions of the Minister of Health reporting through Parliament are all significant commitments by the government to reduce illicit drug use."[48] With respect to cannabis, the CMA argues that the drug strategy should be implanted before moving ahead with depenalization. "Marijuana is an addictive substance that is known to have adverse health effects and we strongly advise Canadians against its use."[49]

The reforms are also supported by the Centre for Addiction and Mental Health (CAMH). "While CAMH does not encourage cannabis use, research indicates most cannabis use is sporadic or experimental ... Based on the research on other jurisdictions that have reformed their cannabis laws, CAMH believes that the current criminal sanctions for cannabis possession are an inappropriate control mechanism. We are encouraged to see that an alternative approach will be implemented" stated Dr. David Marsh, CAMH's Clinical Director, Addiction Medicine.[50]

The legislation has received support from the Canadian Bar Association (CBA), which welcomes the move toward "a more rational approach to the offence of simple possession of marijuana." "We have argued for decades that the heavy hand of our criminal law should be reserved for problems that cause serious harm, and that it is counterproductive to saddle law enforcement agencies and prisons with offences which, in the grand scheme of things, are minor," according to CBA president Simon Potter. The CBA believes that the approach of outright criminalization of possession of small amounts of marihuana has been expensive, ineffectual and counterproductive.[51]

---

(46) CMA, News Release, "Drug strategy welcomed but concerns still exist: CMA," 28 May 2003.

(47) *Ibid.*

(48) CMA, News Release, 27 May 2003.

(49) *Ibid.*

(50) CAMH, News Release, "Centre for Addiction and Mental Health Supports Renewal of Canada's Drug Strategy," 27 May 2003.

(51) Canadian Bar Association, News Release, "CBA Applauds Justice Minister for Tackling Controversial Issue of Possession of Marijuana," 27 May 2003.

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

The Canadian Centre on Substance Abuse (CCSA), an organization that will play an increased role in Canada's Drug Strategy, also supports the reforms. It has cautioned, however, that "the change will have to be accompanied by systematic monitoring of cannabis-related harm under Canada's newly announced national drug strategy."(52) The CCSA's chief executive officer, Michel Perron, stated that "Canada's new drug strategy will provide the kinds of checks and balances we need as we go forward with legislative change, including regular evaluations of impact. It will also be important to ensure that the public receives a clear message that cannabis is not a benign substance and its possession is still against the law. The new strategy also provides for a strengthened commitment to prevention, education and treatment."(53)

In 1998, the CCSA's National Working Group on Addictions Policy published a report entitled *Cannabis Control in Canada: Options Regarding Possession*. The report concluded that the imposition of criminal sanctions was largely ineffective in discouraging the use of cannabis, while it placed a heavy burden on otherwise law-abiding citizens in the form of a criminal record. The Working Group recommended, among other things, that: the severity of punishment for a cannabis possession charge be reduced, and cannabis possession be converted to a civil violation under the *Contraventions Act*; any change in law be subject to systematic evaluation of its impact on cannabis use and indicators of cannabis-related harm, as well as impacts on criminal justice practices and costs; and any change in law that reduces the consequences for a cannabis offence be accompanied by a strong message that this does not signal less concern with the potential problems caused by cannabis use. All of these recommendations appear to have been addressed in the government's proposals.

The government has stated that it hopes that increased enforcement (by issuing fines rather than providing a warning) will lead to a decrease in use. This approach has been criticized by many who point to numerous studies demonstrating that the levels of enforcement and penalties have no discernable effect on drug usage. Many will argue that the continued prohibitionary approach will result in the continuation of certain negative consequences – control by organized crime, no regulation of the quality and potency of the product, etc.

While the proposed depenalization of possession of small amounts of cannabis is sure to be the focus of attention, Bill C-38 also proposes setting up a graduated punishment for production, based on the amount being produced. Certain law enforcement professionals who

---

(52) CCSA (27 May 2003).

(53) *Ibid.*

LIBRARY OF PARLIAMENT
BIBLIOTHÈQUE DU PARLEMENT

claim that sentences are currently far too lenient remain skeptical. "What's 14 times nothing?" asked a member of the Vancouver Police drug squad. Criticism is likely to be levelled at the lack of a minimum sentence, even in the case of large-scale commercial operations. In addition, some commentators will surely point to the many hazards posed by growing operations, including fires, explosions, mouldy houses, toxic chemicals, associated violence, booby traps, etc.(54)

Another factor that is sure to be discussed is the decision not to depenalize the production of small amounts of cannabis. Many will argue that this plays into the hands of organized crime. In addition, some see the separation of soft and hard drug markets as very beneficial, and as something that is less likely to happen if people are required to rely on criminal elements to obtain cannabis.(55)

The majority of provincial governments have expressed opposition to the federal government's reforms. Some have raised concerns that relaxing possession laws sends confusing messages to young people and encourages organized crime to grow and sell even more marihuana.(56) They have also questioned how the tickets will be issued or enforced and how the fines will be collected.(57)

Finally, there are those who believe that the government's proposal strikes the right balance by not doing anything to encourage use while recognizing that the current legislation has resulted in consequences that could be grossly disproportionate to the offence.(58)(59)

---

(54) "High, neighbour!," *The Globe and Mail*, 31 May 2003, p. F1.

(55) "Don't Bogart those police dollars," *The Globe and Mail*, 2 June 2003, p. A11.

(56) "Provinces against cannabis legislation," *Ottawa Citizen*, 31 May 2003, p. A3.

(57) "New legislation brings out critics from all corners," *Times Colonist* [Victoria], 28 May 2003, p. A3.

(58) "A realistic revision of the cannabis law," *The Globe and Mail*, 28 May 2003, p. A16.

(59) "The right compromise," *The Gazette* [Montréal], 28 May 2003, p. A28.